

05

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

KAUPULEHU WATER COMPANY)

For a Change in Rates and Other)
Approvals.)
_____)

DOCKET NO. 05-0124

ORDER NO. 21906

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DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed July 1, 2005
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Karen Higashi.
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
KAUPULEHU WATER COMPANY)
For a Change in Rates and Other)
Approvals.)

Docket No. 05-0124

Order No. 21906

ORDER

The commission initiates the rate review process under Hawaii Revised Statutes ("HRS") § 269-16, including subsection (f), pursuant to the Application of KAUPULEHU WATER COMPANY ("KWC"), filed on May 24, 2005, as amended on June 13 and 27, 2005.¹

I.

Background

KWC requests commission action approving: (1) the transfer of certain facilities from Kaupulehu Makai Venture to KWC; (2) a change in KWC's monthly water consumption charge for potable water, from \$3.75 per thousand gallons ("TG") to

¹KWC's Application, Exhibits A - H, Verification, and Certificate of Service, filed on May 24, 2005 (collectively, the "Application"). On June 13, 2005, KWC filed an Amended Certificate of Service, certifying that three (3) copies of its Application were served upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). On June 27, 2005, KWC filed supplemental exhibits to its Application. Unless noted otherwise, the phrase "amended Application" collectively refers to KWC's filings on May 24, 2005, June 13, 2005, and June 27, 2005.

\$6.65 per TG; (3) an initial rate of \$0.75 per TG for non-potable reject water; (4) a change in the electricity cost used for computing the automatic power cost adjustment charge, from \$0.61605 per TG to \$2.01325 per TG, or such other cost factor as approved by the commission; and (5) certain changes to KWC's tariff rules.²

KWC makes its requests pursuant to Hawaii Revised Statutes ("HRS") §§ 269-16(b), 269-17, and 269-19.5.³ KWC also requests that, pursuant to HRS §§ 269-12(c) and 269-16(b), the commission conduct a public hearing on its Application. KWC served copies of its Application upon the Consumer Advocate (collectively, the "Parties").

On June 9, 2005, the Consumer Advocate filed its statement on the completeness of KWC's Application, concluding that the Application is not complete. HRS § 269-16(d). KWC requested a hearing on the Consumer Advocate's objections to the completeness of KWC's Application, pursuant to HRS § 269-16(d).⁴ In response thereto, the commission scheduled a hearing for June 29, 2005 ("hearing").⁵

²For the transfer, KWC seeks approval for Kaupulehu Makai Venture to transfer a water treatment plant, reservoir, two (2) wells, related transmission lines, and other facilities (collectively, "certain facilities").

³See also Hawaii Administrative Rules ("HAR") chapter 6-61, subchapter 8.

⁴See commission's letter, dated June 9, 2005; and KWC's response letter, dated June 13, 2005.

⁵Notice of Hearing on Objections, dated June 15, 2005.

On June 17, 2005, the commission, on its own motion, bifurcated KWC's request to transfer certain facilities from its other requests involving proposed changes to its tariff, including changes to its water rates.⁶ "The commission intends to address KWC's transfer request first, followed by its review of KWC's remaining requests that involve proposed changes to its tariff pursuant to HRS § 269-16, including changes to its water rates."⁷

On June 27, 2005: (1) the Parties filed a joint letter; and (2) KWC filed supplemental exhibits to its Application. The Parties, by their joint letter: (1) stipulate to certain matters, including the agreement that a hearing is no longer necessary based on the additional information provided by KWC in its supplemental exhibits; and (2) request that the commission find that KWC's Application, as amended, is complete and properly filed under HRS § 269-16(f) and HAR § 6-61-88.⁸

Based on its supplemental exhibits, KWC utilizes a July 1, 2005 to June 30, 2006 test year ("test year").

⁶See Order No. 21878, filed on June 17, 2005. Hereinafter, unless noted otherwise, the phrase "amended Application" refers to KWC's requests involving proposed changes to its tariff, including changes to its rates, and excludes KWC's request to transfer certain facilities.

⁷Id. at 3 (footnote and text therein omitted). The commission intends to establish a separate procedural schedule for KWC's request to transfer certain facilities. See id. at 4, Ordering Paragraph No. 2.

⁸KWC also formally withdraws its request for a hearing. The commission subsequently cancelled the hearing. See commission letter, dated June 28, 2005.

II.

Parties' Resolution

The Consumer Advocate initially objected to the completeness of KWC's Application. Now, however, with KWC's filing of its supplemental exhibits, the Parties stipulate that KWC's amended Application is complete and properly filed, pursuant to HRS § 269-16(f) and HAR § 6-61-88, subject to the Consumer Advocate's proviso that it "reserves [the] right to seek additional information through discovery during the course of this proceeding."⁹

The Consumer Advocate also initially asserted that KWC should have complied with the more stringent filing requirements governing public utilities with annual gross revenues of \$2 million or more. In this regard, the Consumer Advocate reasoned:

1. While KWC's audited financial report (Exhibit C) shows that KWC generating operating revenues of \$1.691 million and \$1.889 million in 2003 and 2004, respectively, KWC forecasts operating revenues of \$2.508 million in its *pro forma* income statement for the twelve (12)-month period ending June 30, 2006 (Exhibit E).

⁹Parties' joint letter, dated June 27, 2005, at 1.

2. Hence, it is unclear whether KWC should file its Application under the requirements of HAR § 6-61-88 or HAR § 6-61-87:

§ 6-61-88

Utilities with annual gross revenues under \$2 M

§ 6-61-87

Utilities with annual gross revenues of \$2 M or more

3. Nonetheless, "[u]ntil proven otherwise, in the interest of conservatism and in the public interest, the Consumer Advocate contend[ed] that [KWC] should have filed under the requirements of HAR § 6-61-87."¹⁰

Now, however, the Consumer Advocate agrees that for this proceeding, KWC's amended Application is properly filed under HRS § 269-16(f) and HAR § 6-61-88.

III.

Less Than \$2 Million

The commission, at the outset, must determine whether to review the completeness of KWC's amended Application under HAR § 6-61-88 (< \$2 M), or the more stringent requirements of HAR § 6-61-87 (> or = \$2 M).¹¹

¹⁰Consumer Advocate's position statement, at 2.

¹¹Under either scenario, the filing requirements of HAR § 6-61-86 also apply.

A.

HRS § 269-16 and HAR Chapter 6-61, Subchapter 8

On June 12, 1982, Act 222, 1982 Session Laws of Hawaii, amended HRS § 269-16 by adding a subsection (g):

For public utilities having annual gross revenues of less than two million dollars, the commission may make and amend its rules and procedures which will provide the commission with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the utility company and its customers.

Act 222, 1982 Session Laws of Hawaii ("Act 222") § 2, at 407 - 410.¹²

Act 222 authorizes the commission to vary the extent and degree of its regulation of public utilities, with smaller utilities of annual gross revenues under \$2 million subject to a lesser degree of economic scrutiny. See House Stand. Comm. Rpt. No. 506-82, in 1982 House Journal, at 1121; and Senate Stand. Comm. Rpt. No. 603-82, in 1982 Senate Journal, at 1204 - 1205.

The commission's rules of practice and procedure governing applications for a rate increase implement Act 222 by subjecting public utilities with annual gross revenues under \$2 million to less stringent filing requirements. Compare HAR § 6-61-88 (< \$2 M) with HAR § 6-61-87 (> or = \$2 M). See also HAR § 6-61-85(a) (the requirement to file a notice of intent does not apply to a public utility with annual gross operating revenues under \$2 million).

¹²On July 17, 1998, subsection (g) was changed to subsection (f). See Act 195, 1998 Session Laws of Hawaii, § 2, at 696 - 698.

On July 6, 2004, Act 168, 2004 Session Laws of Hawaii, amended subsection (f) by streamlining the rate review process for public utilities with annual gross revenues of less than \$2 million:

[For] Notwithstanding any law to the contrary, for public utilities having annual gross revenues of less than \$2,000,000, the commission may make and amend its rules and procedures which will provide the commission with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the utility company and its customers. In the determination of the reasonableness of the proposed rates, the commission shall:

.

Act 168, 2004 Session Laws of Hawaii ("Act 168") § 2, at 825 - 826.¹³

Act 168 requires the commission to undertake an expedited rate review process for general rate increase applications filed by public utilities with annual gross revenues of less than \$2 million, provided that a complete application is filed with the commission. See id. at §§ 1 and 2, at 824 - 826.

B.

Interpretation of HRS § 269-16 and HAR § 6-61-88

HRS § 269-16(f) and HAR § 6-61-88 state, in pertinent part:

Notwithstanding any law to the contrary, **for public utilities having annual gross revenues of less than \$2,000,000**, the commission may make and amend its rules and procedures which will provide the commission with sufficient facts necessary to determine the reasonableness of the proposed rates

¹³Deletions are [bracketed], additions are underscored.

without unduly burdening the utility company and its customers. . . .

HRS § 269-16(f) (boldface added).

For an application by a **public utility with annual gross revenues from its public utility business of less than \$2,000,000** for a general rate increase or to alter any classification, contract, practice, or rule as to result in a general rate increase to be considered a completed application under section 269-16, HRS, the application, in addition to meeting the requirements of [HAR] section 6-61-86, must contain the following:

. . . .

HAR § 6-61-88 (boldface added). See also HAR § 6-61-85(a) (no notice of intent is required).

The fundamental starting point for interpreting a statute is the language of the statute itself. Where the language of the statute is plain and unambiguous, the court's only duty is to give effect to the statute's plain and obvious meaning. In re Roberts' Tours & Transp., Inc., 104 Haw. 98, 103, 85 P.3d 623, 628 (2004) (quoting Mathewson v. Aloha Airlines, Inc., 82 Haw. 57, 71, 919 P.2d 969, 983 (1996), and Housing Fin. and Dev. Corp. v. Castle, 79 Haw. 64, 76 - 77, 898 P.2d 576, 588 - 589 (1995)). See also HRS § 1-14 (words of a law are generally understood in their most known and usual meaning).

The general principles of statutory construction also apply to administrative rules. If an administrative rule's language is unambiguous, and its literal application is neither inconsistent with the policies of the statute the rule implements, nor produces an absurd or unjust result, courts enforce the rule's plain meaning. Moreover, an administrative

agency's interpretation of its own rules is entitled to "deference unless it is plainly erroneous or inconsistent with the underlying legislative purpose." In re Wai'ola O Moloka'i, Inc., 103 Haw. 401, 425, 83 P.3d 664, 688 (2004) (citing Int'l Bhd. of Elec. Workers, Local 1357 v. Hawaiian Tel. Co., 68 Haw. 316, 323, 713 P.2d 943, 950 (1986)).

Applying the principles stated above, the commission, on its own motion and in accordance with HAR § 6-61-160, declares that HRS § 269-16(f) and HAR § 6-61-88 apply to public utilities that have annual gross revenues of less than \$2 million, rather than on a public utility's *pro forma* or proposed revenues stated in its general rate case application.¹⁴ In this case, KWC's audited financial report (Exhibit C) for the calendar year ending 2004: (1) was filed in compliance with its CPCN;¹⁵ and (2) sets forth its annual gross revenues for 2004, the most recent calendar year upon which to calculate KWC's annual gross revenues.

¹⁴HRS § 269-16(f) and HAR § 6-61-88 do not mention or refer to a public utility's *pro forma* or proposed revenues as the basis for determining the \$2 million threshold.

¹⁵On April 26, 1996, the commission issued KWC its CPCN, by Decision and Order No. 14649. Ordering Paragraph No. 7 states:

[KWC] shall file with the commission an annual financial report in accordance with the Uniform System of Accounts - 1984, covering its water utility services commencing with the year ending December 31, 1996, and each year thereafter. The reports shall be filed no later than March 31 for the immediate past calendar year.

Decision and Order No. 14649, filed on April 26, 1996, at 15 - 16 (underscore in original), in Docket No. 94-0300, *In re Kaupulehu Water Co.*

KWC's annual gross revenues for the calendar year ending 2004, as reported by its independent auditor, is \$1,889,155 (Exhibit C), approximately \$110,845 below the \$2 million threshold. HRS § 269-16(d). Thus, the filing requirements of HAR § 6-61-88 (< \$2 M) apply, and the commission will review the completeness of KWC's amended Application on this basis. See also HAR § 6-61-86. Moreover, KWC is not required to pre-file a notice of intent with the commission, prior to its Application. HAR § 6-61-85(a).

IV.

Amended Application

KWC's Application is supported by eight (8) exhibits. Its supplemental exhibits consist of five (5) additional exhibits, including its test year results of operation and average rate base schedules.

With KWC's supplemental exhibits, KWC's amended Application appears consistent with HAR §§ 6-61-86 and 6-61-88, governing the completeness of rate case applications.¹⁶ Hence, the filing date of KWC's complete Application, as amended, is June 27, 2005.

V.

Public Hearing

The commission will: (1) hold a public hearing on KWC's complete Application, as amended, on the island of Hawaii; and

¹⁶See also HRS § 269-16(d) and (f)(3).

(2) notify the Parties of the date, time, and location of the public hearing.

VI.

Discovery

Given the expedited rate review process governing this proceeding, the Parties shall: (1) initiate the discovery process forthwith; and (2) within twenty-one (21) days from the date of this Order, submit a stipulated procedural schedule setting forth the issues and procedural schedule for KWC's requests involving proposed changes to its tariff, including changes to its rates.¹⁷

In the event the conditions set forth in HRS § 269-16(f)(3) are met, i.e., the Parties strictly comply with the established procedural schedule and there is no intervention, "the [P]arties shall not be entitled to a contested case hearing[,]" "prior to the issuance of the commission's [P]roposed [D]ecision and [O]rder." HRS § 269-16(f)(3).

VII.

Declaration and Orders

THE COMMISSION DECLARES, on its own motion and in accordance with HAR § 6-61-160, that HRS § 269-16(f) and HAR § 6-61-88 apply to public utilities that have annual gross revenues of less than \$2 million, rather than on a public

¹⁷In the event intervenor or participant status is later granted to any interested person, the commission will amend the procedural schedule accordingly.

utility's *pro forma* or proposed revenues stated in its general rate case application.

THE COMMISSION ORDERS:


1. The filing date of KWC's complete Application, as amended, is June 27, 2005.


2. The Parties shall initiate the discovery process forthwith. Unless ordered otherwise, within twenty-one (21) days from the date of this Order, the Parties shall submit to the commission a stipulated procedural schedule setting forth the issues and procedural schedule for KWC's requests involving proposed changes to its tariff, including changes to its rates. If the Parties are unable to stipulate to such a schedule, each Party shall submit a proposed procedural schedule for the commission's consideration by the applicable deadline date.

DONE at Honolulu, Hawaii JUL - 1 2005.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

05-0124.sl1

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21906 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: JUL - 1 2005